

Having reviewed the evidentiary record filed herein, the Board finds the decision of the ALJ should be affirmed.

The claimant was employed by respondent as an over-the-road truck driver. He initially began to experience pain in his feet and sought treatment for that condition with Dr. Larry Ball on September 23, 2002. In late October 2002, he reported to respondent that he was having problems with his feet. David Roat, respondent's president, recalls claimant specifically said his condition was not work related. Claimant denies saying his condition was not work related.

Claimant relates his problems to driving a truck with a broken seat. He testified that he reported the problem but it was not fixed. Mr. Roat disputes that assertion. He stated that when first apprised on December 16, 2002, that claimant alleged a work-related accident, he had personally checked the truck and the seat was not broken. The only medical record that mentions the truck seat is the record of claimant's visit with Dr. David N. Weidensaul on November 19, 2002. That record indicates: "He thinks that driving may aggravate the pain because the way the seat on the truck strikes his leg."¹

In late October or early November 2002, claimant provided respondent a letter which indicated that the doctors had not diagnosed his problem.² By that time Dr. Ball had referred claimant to Dr. Randall Hildebrand who examined claimant on November 1, 2002. Dr. Hildebrand expressed concern claimant might be suffering from an inflammatory disorder such as rheumatoid arthritis.

As claimant continued to seek treatment, he was treated by Dr. Weidensaul and referred for examinations by Drs. David G. Anderson, James A. Isaac and Curt A. Thompson. Dr. Weidensaul did not have a final diagnosis for claimant's condition. Dr. Anderson reviewed an MRI which he concluded did not reveal any disc herniation but his impression was claimant had radicular syndrome and recommended an epidural steroid injection. Dr. Isaac performed a neurologic evaluation and concluded claimant might be suffering from an inflammatory mononeuritis or idiopathic plexitis. Dr. Thompson reviewed an MRI and opined claimant had a possible disc extrusion at L2-3 which was causing his right lower extremity radiculopathy.

In response to a query from claimant's attorney, Dr. Weidensaul noted that he had not arrived at a final diagnosis of claimant's condition. In response to a subsequent query from claimant's attorney, the doctor agreed that it was reasonable to believe recurrent trauma from bouncing in a truck seat could cause claimant's injury.

¹ P.H. Trans., Clmt's Ex. 1.

² P.H. Trans., Cl. Ex. 2. Although the letter was dated October 7, 2002, the claimant agreed that the date was probably incorrect because it made reference to Dr. Hildebrand and claimant did not see that doctor until November 1, 2002.

At the preliminary hearing, the ALJ reviewed the medical evidence and noted the absence of a medical causation opinion and further commented that although Dr. Weidensaul had indicated bouncing in a truck seat could cause the injury, nonetheless, the doctor had not arrived at a diagnosis for claimant's condition. Because claimant had a scheduled appointment with a neurosurgeon, the matter was taken under advisement pending receipt of the neurosurgeon's report regarding a specific diagnosis and causation opinion.

The neurosurgeon, Dr. Nazih Moufarrij indicated that he did not feel qualified to give a causation opinion. Dr. Moufarrij did proceed to perform surgery on claimant. Thereafter Dr. Moufarrij responded to an inquiry from claimant's attorney and stated:

At surgery he did not have a herniated disc at the L2-L3 level but a rather narrow lateral recess or foramen of the L3 nerve root. His symptoms could have been exacerbated by a repeated microtrauma at his previous job.

Upon receipt of the doctor's letter, the ALJ concluded claimant had not met his burden of proof to establish he suffered accidental injury arising out of and in the course of his employment. The ALJ noted the doctor's comment that his symptoms could have been exacerbated by microtraumas did not meet claimant's burden of proof to establish as more probable than not that his symptoms were exacerbated by work.

The Board agrees and affirms the ALJ's determination that claimant failed to meet his burden of proof that he suffered an accidental injury arising out of and in the course of his employment.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Bruce E. Moore dated June 30, 2003, is affirmed.

IT IS SO ORDERED.

Dated this 29th day of August 2003.

BOARD MEMBER

c: Robert A. Anderson, Attorney for Claimant
Terry J. Torline, Attorney for Respondent and its Insurance Carrier
Bruce E. Moore, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director